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10/531,682

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Udo Heselhaus

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02/20/2009

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EXAMINER

BLACK, MELISSA ANN

ART UNIT

PAPER NUMBER

3612

MAIL DATE

DELIVERY MODE

02/20/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|---------------------------------------|--|
| Office Action Summary | Application No. 10/531,682 | Applicant(s) HESELHAUS, UDO | |
| | Examiner MELISSA A. BLACK | Art Unit 3612 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This office action is in response to RCE Filed 23 December 2008. Claims 1, 3-12 are pending in the application. Claims stand rejected as set forth below.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 3-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 1 recites the limitation "the front roof part (3)" in line 6. There is insufficient antecedent basis for this limitation in the claim. It should be - a front section of the movable roof part (3)- . Further, in line 9, "a section of the movable roof" which was interpreted as the newly added limitation of the front roof section should read - the front section of the movable roof- . Also, in lines 7-8, is "a raisable rear section of the movable roof" the same thing as the rear roof section? It is unclear as to if it is the rear roof section 5 that is raisable or is it a completely different section of the roof? For Examining purposes it is being interpreted as the rear roof section that is raisable.

5. Claims 8 and 11 include "can be" in line 2, this claim language renders the claim indefinite. Examiner suggest changing to - the rear roof part is lowerable below- . Also there is a "can be" in claim 11 that needs to be changed.

6. Claim 5, line 3, "grips beneath", it is unclear what is meant by this claim language. Examiner is interpreting as the rear bow is underneath the rear roof section.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 4-6 and 8-12 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 19926474 to Minatti.

Minatti discloses a motor vehicle with a roof (1, 13, 12) having at least one essentially horizontally extending movable roof part (1,13) configured to be fully opened and to be fully moved to achieve this full opening, wherein the movable roof part extends from an area adjacent to a windshield (g) frame (5) to a rear roof part (12), wherein the front roof part (1, 13) is separated from the rear roof part (12), wherein a raisable rear section of the movable roof part (3) is raisable in such a way that a section of the movable roof part (1, 13) located in front of the raisable rear section remains in a closed position (Please see highlighted section in the attached computer translation), and wherein the movable roof part (1, 13) occupies the entire width between upper edges of side windows (8) of the motor vehicle (See Figure 8). Re Claims 4 and 9, Minatti discloses (Figure 8), a flexible covering for the movable roof part and the rear roof part covers a rigid roll bar (6). Minatti discloses that the rear roof part can be lowered below a belt line (see figures 6 and 7). Re Claim 5, Minatti discloses to allow the raisable rear section (12) to be raised, a roof bow is provided which grips beneath the rear section and is displaceably mounted on lateral frame parts of the movable roof part (1, 13)(See Figure 8). Re Claim 6, it would be inherent that Minatti would have a remotely controlled drive for displacement of the

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rear bow and roof mechanism. Re Claims 10-12, Minatti discloses the rear roof part (12) is at least partially movable to create an opening for the passage of the fully movable roof part (1, 13) to allow the latter to be opened (Figure 8), wherein the rear roof part (12) is swung open about a rear axis to create an opening for the passage of the roof part (1, 13) and is swung closed again over the opened roof part, wherein the opening for the passage of the movable roof part (1, 13) is located between the rigid roll bar (6) and the opened rear roof part (12).

Claim Rejections - 35 USC § 103

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE 19926474 to Minatti in view of either US Pat # 6,267,433 to Bayer et al or US Pat # 4,644,235 to Ohta.

Minatti fails to disclose that the roof is moveable while the vehicle is traveling.

Bayer et al teaches a roof that open during traveling, and further teaches that the roof can be lifting (Column 3, lines 40-49).

Or, Ohta teaches a roof that is moveable during travel (see columns 3 lines 16-27, and 4 lines 55-60).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to make the roof open while traveling as taught by Bayer et al or Ohta on the device of Minatti in order to not have to stop the vehicle to open or close the roof.

Allowable Subject Matter

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11. Claim 7 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

12. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA A. BLACK whose telephone number is (571)272-4737. The examiner can normally be reached on M-F 7:00-3:30 ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on (571) 272-6659. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dennis H. Pedder/

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Primary Examiner, Art Unit 3612

/M. A. B./

Examiner, Art Unit 3612